IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12028 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEDINEX LABORATORIES PVT. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12028 of 2003
M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 03/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

1. RULE. Service of rule is waived by learned Senior Central Government Standing Counsel Shri D.N. Patel for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The grievance ventilated in the petition by the petitioner - Company is that the amount of refund claimed by the petitioner - Company under its application dated 10th February, 1986 has not been granted to it till today, though, the petitioner is entitled to the said amount of refund as per the judgement delivered by the Hon'ble Supreme Court.

3. The facts, which are not in dispute, in a nutshell, are as under:

3.1. In pursuance of an order-in-orginal bearing No.BVR/64/1985 dated 31st October, 1985, the petitioner Company became entitled to refund of a sum of Rs.11,99,441=61. The petitioner therefore submitted an application for refund dated 10th February, 1986. During the pendency of the said application, the order referred to hereinabove, which had been passed by the Assistant Collector, Central Excise, Bhavnagar, had been challenged before the Collector (Appeals), Central Excise and Customs, Bombay, he allowed the appeal by an order dated 3rd February, 1988. In the circumstances, the Assistant Commissioner of Central Excise and Customs, Bhavnagar, informed the petitioner-Company under letter dated 10th March, 1988 that the application for refund could be entertained and its claim file was treated as closed. Thereafter, the petitioner had preferred an appeal before the CEGAT against the order of the Collector (Appeals) and the said appeal had been allowed. The respondent authorities had challenged the validity of the order passed by the CEGAT before the Hon'ble Supreme Court, and the Hon'ble Supreme Court was pleased to uphold the validity of the order passed by the CEGAT. Thus, finally the petitioner succeeded in the said litigation.

4. Now the question is with regard to the amount of refund, which should be paid to the petitioner. As the refund application had been submitted on 10th February, 1986, it is doubtful whether the original application is still with the respondent authorities or the respondent authorities had returned the said application to the

petitioner-Company.

5. Looking to the aforestated factual position, it is directed that within a period of two weeks from today the petitioner-Company shall submit a photostat of refund application dated 10th February, 1986 alongwith relevant record so that the said refund application can be scrutinised by the concerned authority. It is hoped that the said refund application shall be scrutinised as soon as possible and preferably within a period of four months from the date of submission of the refund application with necessary record.

6. Learned advocate Shri Uday Joshi appearing for the petitioners has submitted that all possible efforts shall be made by the petitioners to submit the documents which might be required by the concerned authority in the course of hearing or upon getting a show-cause notice, which might be issued to the petitioner - Company.

7. In view of the above order, the petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. DAVE, J.)

(K.A. PUJ, J.)

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